IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. 77-1201

ZEIGLER COAL COMPANY,

Petitioner,

v.

LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA AND LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

KENNITH W. BLAN, JR.
4 West Seminary Street
Danville, Illinois 61832
(217) 443-0304
Attorney for Petitioner

Of Counsel:
JOHN L. KILCULLEN
DAVID S. SMITH
Kilcullen Smith & Heenan
1800 M Street, N.W.
Washington, D.C. 20036
(202) 296-5700

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No.

ZEIGLER COAL COMPANY,

Petitioner,

v.

LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA AND LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner Zeigler Coal Company respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Seventh Circuit entered in this case on December 1, 1977.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit appears at 566 F.2d 582 and is appended at Appendix A. The order of the United States District Court for the Eastern District of Illinois dated September 1, 1976 is not reported, but is appended as Appendix B.

JURISDICTION

The judgment of the United States Court of Appeals was entered on December 1, 1977 and this petition is being filed within ninety days of that date. This Court's jurisdiction is invoked under 20 USC section 1254(1).

QUESTION PRESENTED

Whether a Wildcat Strike by United Mine Workers at Petitioner's Mines—Precipitated Over an Arbitrable Dispute Involving Members of the Same Union At Another Mine in the Same Industry-Wide Bargaining Unit—Violates the National Agreement Under which the Union Agreed to Submit All Disputes to Binding Arbitration, and is thus Subject to a Boys Markets Injunction?

STATUTE INVOLVED

This case involves section 301(a) of the Labor Management Relations Act, 29 USC 185(a) appended as Appendix E.

STATEMENT OF THE CASE

Petitioner Zeigler Coal Company is engaged in mining of bituminous coal at several locations in Illinois. The miners employed at Zeigler's mines are represented by the United Mine Workers of America, and during all pertinent periods were covered by the 1974 National Bituminous Coal Wage Agreement entered into between the Union and the

Bituminous Coal Operators' Association (BCOA), a multi-employer bargaining group of which Zeigler Coal Company was a member.

The 1974 National Bituminous Coal Wage Agreement, referred to hereinafter as the National Agreement, establishes a mandatory arbitration procedure for settlement of disputes arising at any mine, including differences respecting "... the meaning and application of the provisions of this Agreement ... matters not specifically mentioned in this Agreement, or ... any local trouble of any kind [arising] at the mines ..." (Article XXIII, App. D. p. 1d), and a separate promise to maintain the integrity of the agreement by exclusive resort to arbitration for settlement of all disputes and claims. (Article XXVII, App. D. p. 8d).

During 1975, while the National Agreement was in force and effect, a series of wildcat strikes took place at petitioner's Murdock Mine and Zeigler No. 5 Mine, and upon motion of petitioner the United States District Court for the Eastern District of Illinois issued a *Boys Markets* injunction[1] on August 25, 1975 restraining respondents Local 1870 and Local 8682, and all persons acting in concert with them for engaging in any strike or work stoppage, "... because of any dispute, disagreement or local trouble of any kind which is required to be settled through the grievance and arbitration provisions or other procedure of the 1974 National Bituminous Coal Wage Agreement." (App. C. pp. 5c, 6c). This injunction remained in effect up to the time of the events described below.

In July 1976 United Mine Workers members employed by Cedar Coal Company at Boone, West Virginia engaged

[1] *Boys Markets* v. *Retail Clerks Union*, 398 US 235, 90 S.Ct. 1583, 26 L.Ed. 2d 199 (1970).

in an illegal strike over a job classification dispute which was subject to arbitration under the National Agreement, and this illegal strike precipitated a series of wildcat strikes by UMWA members at other mines in West Virginia, which spread rapidly to other states.

On July 30, 1976 two unidentified men appeared as pickets at the parking lots of petitioners' Murdock Mine and No. 5 Mine, and the miners employed at the mines declined to cross the picket line to report for work. Although the work stoppage was not authorized by the United Mine Workers' Union or any of its affiliated local unions, it continued until August 16, 1976. In all, thirty-nine production shifts were shut down as a result of this wildcat strike, and resulting losses to Zeigler measured by fixed overhead and other continuing costs amounted to $429,870.[2] In addition, the miner's pension and welfare funds were deprived of substantial contributions which would have accrued under the contractual formula which ties employer contributions to tons of coal produced and the number of employee hours worked.

On August 30, 1976 Zeigler filed with the District Court a motion requesting that civil contempt sanctions be imposed upon the locals for violation of the Court's August 25, 1975 injunction, which had never been dissolved and remained in force and effect at the time of the July 30, 1976 walkout. Upon consideration of Zeigler's motion the District Court noted that in the interim this Court had issued its decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 96 S. Ct. 314, 49 L. Ed. 2d 1022 (1976), and concluded that the strike action of the respondent locals here did not violate the injunction

[2]Hearing Transcript, pp. 4, 5.

because, in the words of *Buffalo Forge*, it was not "... over any dispute between the union and the employer that was even remotely subject to the arbitration provisions of the contract." (App. B. p. 2b)

The Court of Appeals for the Seventh Circuit affirmed the District Court's ruling based upon a similar reading of *Buffalo Forge*. In so doing, the Court overruled its own previous decision in *Inland Steel Co.* v. *United Mine Workers*, 505 F.2d 293 (7th Cir. 1974) which held that the scope of the arbitration clause of the National Bituminous Coal Wage Agreement is sufficiently broad to embrace a work stoppage resulting from "local trouble of any kind arising at the mine", and thus warrants the use of a *Boys Markets* injunction against wildcat strikes brought on by the appearance of roving pickets.

The Court of Appeals declined to accept petitioner's argument that, unlike the strike at issue in *Buffalo Forge*, the strike here was not a "sympathy" strike but was in fact an extension of the illegal primary strike which began at the Cedar Coal Company mine in West Virginia, and that the strikers here had an identifiable interest in the outcome of the underlying contractual issue in the West Virginia dispute. Another important difference which the Court of Appeals refused to consider was that the primary strike in *Buffalo Forge* was a legal strike authorized and directed by the international union, whereas in this case the primary strike was an illegal, unauthorized strike admittedly involving an issue required to be submitted to arbitration under the National Agreement, and was thus in violation of the National Agreement.

REASONS FOR GRANTING THE WRIT

I

THE DECISION BELOW IS CONTRARY TO FEDERAL LABOR POLICY FAVORING ARBITRATION OF INDUSTRIAL DISPUTES, AND IS BASED UPON A MISCONSTRUCTION OF THE DECISION OF THIS COURT IN BUFFALO FORGE.

This Court has repeatedly noted that the "unmistakable policy of Congress" as expressed in 29 USC sec. 173(d) is that "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement." *Gateway Coal Co.* v. *United Mine Workers*, 414 US 368, 377 (1974). This policy was implemented by the Court's holding in *Boys Markets* that the Norris-La Guardia Act's ban on federal court injunctions in labor disputes should not be construed as precluding the exercise of a district court's power to enjoin a strike over a grievance which is subject to adjustment and arbitration under the collective bargaining agreement. 398 US 235, 254 (1970).

Buffalo Forge did not undermine or modify this policy, but merely held that *on the facts of that case* a duly authorized and legal sympathy strike by one local union in support of the economic strike of a sister local did not involve any arbitrable issue, and was therefore not subject to a district court injunction. Unfortunately, the district courts, and now some of the circuit courts, have erroneously construed *Buffalo Forge* as having the effect of overruling *Boys Markets* as applied to illegal wildcat strikes in the coal industry.

In the instant case both the District Court and the Court of Appeals failed to take into account the marked and numerous distinctions between the factual situation in *Buffalo Forge* and that present here. In treating the wildcat strike at Zeigler's mines as a "sympathy" strike comparable to the *Buffalo Forge* strike, they misconstrued the true nature of this strike in the overall context of the collective bargaining structure of the bituminous coal industry.

To illustrate the very fundamental differences between this case and *Buffalo Forge* it will be remembered that in that case there were two separate groups of employees in two separate bargaining units with no unitary labor agreement. One group, the production and maintenance employees, had an on-going collective bargaining contract, and the other group (office and technical) had just organized and was in the process of negotiating a contract. When the negotiations broke down the primary strike by the office and technical employees was not in derogation of any duty to arbitrate. It was simply an economic strike, and the dispute over the negotiation of an agreement was not arbitrable. Thus, when the production and maintenance employees struck in sympathy with the office and technical group there was no underlying arbitrable issue, and the production and maintenance strikers had no direct stake in the economic demands of the primary strikers. Their strike was, moreover, authorized and approved by the international union.

The contrast with the instant case is readily apparent. Here there was a single bargaining unit, and a single collective bargaining agreement covering all miners at the respective mines. The primary strike at Cedar Coal involved a dispute subject to arbitration under the National Agreement, and was an unauthorized, illegal strike in

derogation of the Agreement. The strike by the UMWA members at Zeigler's mines was for all practical purposes an extension of the primary strike to put pressure upon the multi-employer bargaining-unit employers, individually and collectively, to concede on an arbitrable issue which would have across-the-board application to all BCOA members and all UMWA members because of the unitary arbitration system created by the National Agreement. The Zeigler miners thus had a direct stake in any concessions or benefits which might be achieved as a result of their actions, and their objectives must be deemed integrated with those of the primary strikers.

In *Buffalo Forge* this Court found that the strike of the production and maintenance local "had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain", and "neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contracts between the employer and respondents." 428 US at 407, 408.

The situation here is entirely different, since the primary strike did indeed have the effect of denying and evading an obligation to arbitrate grievances, and of depriving the employer of his bargain. That strike admittedly involved an underlying arbitrable issue, and was in derogation of both the bargaining contract and the national policy favoring arbitration as a means of settlement of disputes over the application or interpretation of an existing collective bargaining agreement. *Gateway*, supra. The subsequent strikes at the Zeigler mines and other mines had one overriding purpose, namely, to bring about a concession by the signatory companies to the National Agreement on a disputed job classification question which was concededly

subject to arbitration. The Arbitration Review Board established under Article XXIII of the National Agreement, composed of union and employer representatives and a neutral third party jointly selected by them, has construed the contract language as barring such strikes. In Decision No. 108, issued October 10, 1977 the Arbitration Review Board stated:

> "... we do not believe that a distinction can properly be drawn between the picketing of an employee's own mine and the picketing of other mines, be they mines of the employee's Employer or mines of another Employer. [footnote omitted] ... the problem with drawing a distinction between an employee's own mine and other mines is that it would permit Miners, covered by one and the same Agreement, to enter into 'you picket my mine and I'll picket your mine' mutual-aid pacts, as we said in Decision 105."

Accordingly, it should be clear that there is no rational basis for applying the concepts of *Buffalo Forge* to this case. Not even superficially can it be said that this was a "sympathy" strike within the meaning of *Buffalo Forge*. This is not a case where one union with a separate agreement in a separate employee bargaining unit respects the picket line of another union negotiating for a separate agreement in a separate unit, and where there is no arbitrable dispute other than the sympathy strike itself. Here there was a direct unity of interest in an underlying dispute involving the meaning and application of the terms of the collective bargaining contract covering all of the parties involved.

By failing to recognize the true nature and purpose of the strike here, and in treating it as a parallel situation to

Buffalo Forge, the courts below seriously erred in refusing petitioner the relief requested.

II

THERE IS A COMPELLING NEED FOR A CLEAR-CUT RULING ON WHETHER THE DISTRICT COURTS CAN EXERCISE AUTHORITY TO ENJOIN ILLEGAL WILDCAT STRIKES BY COAL MINERS WHERE, AS HERE, THE PRIMARY STRIKE INVOLVES AN UNDERLYING ARBITRABLE ISSUE THE RESOLUTION OF WHICH WOULD HAVE ACROSS-THE-BOARD APPLICABILITY TO UMWA MEMBERS AT ALL MINES

The issue presented here is one of national interest, and expeditious resolution of it is essential to the stability of a major industry, and, in turn, of critical importance to the national economy. Wildcat strikes have become epidemic in the bituminous coal industry despite the fact that the National Agreement provides one of the broadest and most available arbitration procedures to be found anywhere. The Arbitration Review Board created under the National Agreement is expressly designed to reconcile differences among individual arbitrators, and assure uniformity as to the meaning and interpretation of the National Agreement.

Prior to the *Buffalo Forge* decision the federal courts construed the earlier decisions of this Court in *Boys Markets* and *Gateway Coal Co.* as authorizing injunctions against wildcat strikes in the coal fields. In *Gateway* the Court expressly found that the grievance and arbitration

language of the National Agreement[3] constituted an implied no-strike clause, and that the employer was entitled to injunctive relief against wildcat safety strikes. Relying on *Teamsters Local 174* v. *Lucas Flour Co.*, 369 US 95, 82 S.Ct. 571, 7 L.Ed. 2d (1962) the Court noted in *Gateway* that "A contractual commitment to submit disagreements to final and binding arbitration gives rise to an obligation not to strike over such disputes." 414 US at 381.

On the strength of *Gateway*, and until *Buffalo Forge* came down two years later, the courts of appeals proceeded to uphold the issuance of injunctions to restrain wildcat strikes resulting from stranger picketing at mines other than the mine where the primary dispute arose. See, e.g. *Inland Steel Co.* v. *United Mine Workers*, 505 F.2d 293 (7th Cir. 1974).

It is significant that in the immediate aftermath of *Buffalo Forge* a drastic surge in wildcat strikes by UMWA locals occurred, and there developed a state of virtual anarchy in which the national UMWA was rendered powerless to stem the ever-mounting tide of wildcat strikes by its affiliated local unions.[4]

The tragic consequences of this chaotic condition fall most heavily upon the miners who, for the most part, would

---

[3]In *Gateway* the Court was dealing with the 1968 National Agreement which contained substantially similar arbitration provisions.

[4]For example, in the six month period prior to the Buffalo Forge decision in July 1976 wildcat strikes in BCOA mines resulted in a loss of slightly more than 500,000 man-days of work. By contrast, in August 1976 alone wildcat strikes caused a loss of 843,683 man-days of work, more than 9 million tons of coal production, $47,507,500 in miners' wages, and $16,705,000 in trust fund contributions. In August 1977 wildcat strikes in BCOA mines cost almost 1 million man-days, $59 million in miners' wages, 8.5 million tons of coal and $18 million loss to the trust funds. Source: BCOA Research Department Release Nov. 1977.

obviously prefer to continue earning a livelihood for themselves and their families, but are prevented from doing so by any small group of wilful hot heads who set up a wildcat picket line. Not only do the miners suffer the loss of a large part of their income each year, but their health and pension plans which are funded by tonnage contributions have been brought to the brink of insolvency.

As can be seen, wildcat picketing has the effect of denying to both sides, union and management alike, the expected fruits of their bargain, a bargain which was designed to ensure stable and uninterrupted employment for the miners on the one hand, and uninterrupted production for the mine operator on the other. The damage to the public interest, and to the national labor policy, is also manifest.

Unfortunately, in the wake of *Buffalo Forge* the Courts of Appeals have taken widely divergent positions in dealing with wildcat strikes in the coal industry, and as a result the current state of the law is one of confusion and uncertainty. The Court of Appeals for the Sixth Circuit, as well as the Seventh Circuit in the present case, has viewed stranger picketing as not in violation of the arbitration clause of the National Agreement, and hence not enjoinable. *Southern Ohio Coal Co.* v. *UMWA*, 551 F.2d 695 (1977), cert. den. 434 US ____ (1977). The Court of Appeals for the Fourth Circuit has held, on the other hand, that where the purpose of a wildcat strike by one local union of the UMWA was to compel the employer to concede an arbitrable issue to another local representing employees of the same employer the district court erred in dismissing the employer's complaint for injunction. *Cedar Coal Co.* v. *UMWA*, 560 F.2d 1154 (1977), cert. den. 434 US ____ (1978). Going a step further, the Court of Appeals for the Third Circuit in *Republic Steel Corp.* v. *UMWA*, Nos. 77-1350, 77-2037,

77-2038, decided February 2, 1978, involving a factual situation substantially similar to the present case, concluded that *Buffalo Forge* does not restrict the availability of injunctive relief against a wildcat strike brought on by stranger picketing ". . . if it be shown that the issues of the underlying strike were not only found to be arbitrable, but were found by an arbitrator to violate the union's no-strike obligation." Slip Op. at 17. In remanding the case for further consideration the Court stated:

> "Without attempting to plot the extreme boundaries of proof, we think that Republic should at least be required to prove that the stranger picketing was conduct that would be enjoinable under the *Boys Markets* rule. That is, Republic should be required to prove that the dispute stranger UMWA pickets had with *their* employer was one that was subject to the grievance and arbitration clause contained in the Agreement." Slip Op. at 19. Underscoring in original.

The Court held further that the International UMWA may be liable in damages if it is found not to have exercised reasonable efforts to halt the unlawful conduct of its members and stop the spread of illegal wildcat strikes. On this point the Court observed:

> "Our holding that the International may be liable is mandated by the public interest. The International union simply must bear certain obligations if it is to continue to be entitled to the rights and benefits accorded by our national labor policy. To the extent that any union — local, district, or international; craft, industrial or independent — refuses to enforce appropriately authorized union discipline upon recalcitrant members who violate either collective bargaining agreements or internal by-laws of the union, that union can be said to have abrogated a proportion of valued rights granted to the union under our national labor policy." Slip Op. at 23.

To the extent there exists such diversity among the various Circuit Courts as to the meaning of *Buffalo Forge* it is evident that further clarification of this important subject by this Court is urgently required.

CONCLUSION

In view of the overall public policy considerations articulated in *Boys Markets*, it must be concluded that the decision in *Buffalo Forge* was intended to have application only to the type of true "sympathy strike" involved in that case, and that the Court in *Buffalo Forge* could not have intended to deny relief for the kind of illegal, unauthorized stranger picketing and wildcat striking involved in this case.

It follows then, that the Court of Appeals here has grievously misconstrued and misapplied the *Buffalo Forge* decision, and that there is a compelling need for clarification of the issue by this Court. For this reason petitioner respectfully urges the Court to grant this petition for a writ of certiorari.

Respectfully submitted,

Kennith W. Blan, Jr.
4 West Seminary Street
Danville, Illinois 61832
(217) 443-0304

Attorney for Petitioner

Of Counsel

John L. Kilcullen
David S. Smith
Kilcullen, Smith & Heenan
1800 M Street, N.W.
Washington, D.C. 20036
(202) 296-5700

Appendix A

In the
United States Court of Appeals
For the Seventh Circuit

No. 76-2113
Zeigler Coal Company,

Plaintiff-Appellant,

v.

Local Union No. 1870, United Mine Workers of America and Local Union No. 8682, United Mine Workers of America,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern Distict of Illinois
No. 75-2-085—Henry S. Wise, Judge.

Argued June 7, 1977—Decided December 1, 1977

Before BAUER, WOOD, *Circuit Judges*, and MARSHALL, *District Judge.**

BAUER, *Circuit Judge.* Ziegler Coal Company here appeals the district court's refusal to hold the United Mine Workers (UMW) locals in civil contempt for allegedly violating a prior order of the district court enjoining the locals from engaging in any work stoppages over disputes made subject to arbitration by

*The Hon. Prentice H. Marshall, United States District Court for the Northern District of Illinois, is sitting by designation.

the 1974 National Bituminous Coal Wage Agreement, to which both Zeigler and the UMW are signatories. Zeigler, alleging that the defendants were engaged in a wildcat strike over an arbitrable issue in violation of the injunction, sought both a civil contempt citation and damages. The defendants answered that they were engaged in a sympathy strike that was not over any underlying dispute with the company subject to arbitration and thus did not violate the district court's order. The district court agreed with the union's position and denied plaintiff's motion on the authority of *Buffalo Forge Co.* v. *United Steelworkers of America*, 428 U.S. 397 (1976). For the reasons noted below, we affirm the district court's ruling.

I.

The events giving rise to this action sprang from a local dispute at a Boone County, West Virginia mine, which prompted a wildcat strike by the mine workers there. The strike soon precipitated walkouts in seven States as other locals honored roving pickets set up by the West Virginia miners and others who had walked out in sympathy with them. The West Virginia strike had been in progress about three weeks when members of the locals involved here were confronted at the Zeigler mines by a picket line manned by persons claiming to be members of an unnamed Southern Illinois UMW local that had gone out in sympathy with the West Virginia miners. The locals honored the stranger pickets, and this action resulted.

Zeigler contends that, by honoring the stranger pickets, the locals violated the district court's order enjoining them from striking over arbitrable issues that had been issued under the authority of *Boys Markets, Inc. v. Retail Clerk's Union*, 398 U.S. 235 (1970). Relying on *Inland Steel Co. v. United Mine Workers of America*, 505 F.2d 293, 298-99 (7th Cir. 1974), Zeigler states that the locals' right to honor stranger pickets is an issue subject to arbitration under the governing collective

bargaining agreement, which provides for arbitration of "any local trouble of any kind arising at the mine." Accordingly, Zeigler reasons, by honoring the stranger pickets the locals were striking over an arbitrable issue and thus had violated the district court's *Boys Markets* injunction.

The locals answer that their miners were not striking over any local issue subject to arbitration but engaging only in a sympathy strike. According to the locals, the Supreme Court's recent decision in *Buffalo Forge Co. v. United Steelworkers Union*, 428 U.S. 397, 407-08 (1976), requires us to overrule our prior decision in *Inland Steel* to the extent that the latter holds that *Boys Markets* authorizes issuance of an injunction against a sympathy strike pending arbitration of any dispute over the legality of the strike.

II.

In *Inland Steel*, we held that a UMW strike resulting from the honoring of a stranger picket was enjoinable on the authority of *Boys Markets*. We reasoned that, because the National Bituminous Coal Wage Agreement of 1971 rendered the union's right to honor a stranger picket subject to arbitration, the union impliedly bound itself not to strike over that dispute. See *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368, 380-84 (1974). Accordingly, a *Boys Markets* injunction would issue to enforce the union's duty to arbitrate. See 505 F.2d at 299-300.

In a cogent dissent, Chief Judge Fairchild reasoned that, because the union's strike was precipitated merely by the picketing of a third-party union rather than by any local grievance against the employer, the strike could not be said to be "over" any underlying arbitrable dispute between the parties. Thus, even if the right to honor stranger pickets was itself arbitrable, injunctive relief would be inappropriate as it would effectively constitute a prejudgment of the merits of the dispute the parties had agreed to submit to arbitration. To hold

otherwise, said Judge Fairchild, "would be to permit the narrow exception created by *Boys Markets* to subsume the rule." 505 F.2d at 300.

In *Buffalo Forge*, the Supreme Court held that a sympathy strike allegedly violative of an express no-strike clause contained in the governing collective bargaining agreement was not subject to a *Boys Markets* injunction. Notwithstanding the conceded arbitrability of the question of whether the union's strike violated the no-strike agreement, the Court determined that the Norris-LaGuardia Act barred the preliminary injunctive relief sought by the employer. The *Boys Markets* rationale for issuance of an injunction was inapposite because

> "the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between the employer and respondents. The strike had neither the purpose nor the effect of denying or evading any obligation to arbitrate or of depriving the employer of his bargain. Thus, had the contract not contained a no-strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the sympathy strike in this case." 428 U.S. at 408 (emphasis in original).

Moreover, the Court noted, neither the fact that the strike allegedly violated the union's no-strike pledge, nor the fact that the parties' dispute over the legality of the strike was arbitrable, justified granting injunctive relief. The *Boys Markets* exception to the Norris-LaGuardia Act's anti-injunction policy, said the Court, had the limited purpose of enforcing agreements to arbitrate. That limited purpose would not be served by issuing an injunction for "the parties' agreement . . . to arbitrate their

differences themselves would be eviscerated if the courts for all practical purposes were to try and decide contractual disputes at the preliminary injunction stage." 428 U.S. at 411-12.

We think it clear from the above that *Buffalo Forge* proscribes issuance of a *Boys Markets* injunction against a sympathy strike alleged to be in violation of an express or implied no-strike agreement pending arbitration of the parties' dispute over the legality of the strike. *Buffalo Forge* teaches that where a strike is not "over" any underlying dispute between the parties subject to arbitration but rather is itself the very subject of the parties' dispute, issuance of an injunction against the strike would constitute an unwarranted judicial intrusion into the merits of the controversy.

In light of that teaching, we believe that our prior decision in *Inland Steel* must be reconsidered.[1] As the Supreme Court noted in *Buffalo Forge*, "[t]o the extent that the Court[s] of Appeals . . . have assumed that a mandatory arbitration clause implies a duty not to engage in sympathy strikes, they are wrong." *Id.* at 408 n. 10. In view thereof, we hereby overrule *Inland Steel* insofar as it holds that a *Boys Markets* injunction may issue against a sympathy strike pending arbitration of any dispute between the parties concerning the Union's right to engage in such a strike.** Accord, *United States Steel Corp. v. United Mine Workers of America*, 548 F.2d 67 (3d Cir. 1977), overruling *Island Creek Coal Co. v. United Mine Workers of America*, 507 F.2d 650 (3d Cir. 1974).

---

[1]Even before the Supreme Court decided *Buffalo Forge*, we had limited *Inland Steel* in *Hyster Co. v. Independent Towing & Lifting Mach. Ass'n*, 519 F.2d 89 (7th Cir. 1975), and *Gary Hobart Water Corp. v. NLRB*, 511 F.2d 284 (7th Cir. 1975).

**Pursuant to the provisions of Circuit Rule 16(e), the portions of this opinion relating to the conflict between *Inland Steel* and *Buffalo Forge* have been circulated among all judes in regular active service. No judge favored a rehearing en banc with respect to the overruling of *Inland Steel.*

III.

Recognizing that we might find it necessary to overrule *Inland Steel* in light of *Buffalo Forge*, Zeigler seeks to distinguish the Supreme Court's decision from the case at hand. The company claims that, unlike the strike at issue in *Buffalo Forge*, the defendants' strike was not a true "sympathy" strike but merely an extension of the illegal primary strike begun by their brother West Virginia local. Zeigler notes that the *Buffalo Forge* strike was authorized by the international union, and that the striking workers had no direct or beneficial interest in the outcome of the dispute between the employer and the union whose picket lines precipitated their strike. Here, in contrast, says Zeigler, the defendants had a direct contractual interest in the outcome of the underlying West Virginia dispute because they were bound by the same collective bargaining agreement as the West Virginia local. Accordingly, Zeigler reasons, because the defendants stood to benefit from extending and supporting the illegal primary strike over an issue that all the UMW locals had agreed to submit to arbitration, their strike cannot be regarded as the type of disinterested "sympathy" strike protected by *Buffalo Forge*.

We would agree with Zeigler that, if the defendants' strike were simply an extension of the illegal West Virginia wildcat, this would be a paradigm case for a *Boys Markets* injunction. There is nothing in the record before us, however, supportive of the company's contention that, by refusing to cross the stranger pickets, the defendants were adopting the grievances and goals of the West Virginia local as their own and thus striking "over" a matter subject to arbitration. Like the Sixth Circuit in *Southern Ohio Coal Co. v. United Mine Workers of America*, 551 F.2d 695, 703-05 (6th Cir. 1977), we are unpersuaded that the mere fact that the defendants were bound by the same contract as their brother West Virginia miners means that they had any direct or beneficial interest in the outcome of the underlying dispute that precipitated the West Virginia strike. The district court found

that the defendants were engaged merely in a sympathy strike and not a strike over any local grievance with Zeigler that they were contractually bound to arbitrate. The court's finding is amply supported by the record before us, and, for the reasons noted in *Southern Ohio Coal Co., supra*, neither the fact that the defendants were bound by the same contract as the West Virginia local nor the fact that the stranger picket may itself have been illegal give us cause for distinguishing *Buffalo Forge*.

We believe the district court correctly ruled that the defendants were not engaged in a strike "over" any dispute with Zeigler subject to binding arbitration. Accordingly, they were not in violation of the district court's prior order. The district court's judgment is therefore

AFFIRMED.

A true Copy:
Teste:

_____
Clerk of the United States Court of Appeals for the Seventh Circuit

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ILLINOIS

ZEIGLER COAL COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA,	)	No. 75-2-085
	)	
AND	)	
	)	
LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA,	)	
	)	
Defendants.	)	

ORDER

This matter comes before the Court on the motion of ZEIGLER COAL COMPANY to punish defendant mine worker locals Nos. 1870 and 8682 for contempt in having allegedly violated the terms of a preliminary injunction issued by this court on August 25, 1975. The events giving rise to the present action involve an unauthorized work stoppage by defendant locals, in response to the request of members of a third local not in the employ of plaintiff, to participate in a multistate wildcat, as a supposed demonstration of union solidarity; A sympathy strike. The parties do not contend that the work stoppage herein complained of, which began on July 30, 1976

and terminated on August 16, 1976, was the result of any dispute arising between the parties to this action. The sole question for determination by this court is whether such a work stoppage is proscribed by the preliminary injunction heretofore entered in this case.

Oral argument was heard on August 16, 1976, and briefs were submitted. The court, being fully advised in the premises, finds that the unauthorized walkout was not in violation of its August 25, 1975 order. The scope of the order, by its terms, was limited to "any dispute, disagreement or local trouble of any kind which is required to be settled through the grievance and arbitration provisions or other procedure of the 1974 National Bituminous Coal Wage Agreement, . . ."

The court finds that the walkout was not "over any dispute between the union and the employer that was even remotely subject to the arbitration provisions of the contract." *Buffalo Forge Co. v. United Steel Workers of America, AFL-CIO, et al.*, 44 L.W. 5347, 5349 (July 6, 1976); See also *Hyster Company v. Independent Towing and Lifting Machine Association*, 519 F.2d 89 (7th Cir. 1975). There being no arbitrable dispute as the subject of the walkout, there can be no violation of this court's order, which was fashioned pursuant to *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970).

IT IS THEREFORE ORDERED that the motion of ZEIGLER COAL COMPANY to punish defendant union locals for contempt of this court's order of August 25, 1975, be, and the same is hereby, denied.

ENTERED this first day of September, 1976.

CHIEF JUDGE

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ILLINOIS

ZEIGLER COAL COMPANY, Plaintiff, vs. LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA, and LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA, Defendants.	Case No. 75-2-085

PRELIMINARY INJUNCTION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause coming on to be heard pursuant to the Order to Show Cause issued by this Court on August 15, 1975, returnable on August 20, 1975, and a Stipulation and Order entered August 18, 1975, continuing and setting over the same until August 25, 1975, and statements of counsel and testimony having been heard in open Court with all parties having full opportunity to present evidence, examine and cross-examine witnesses and to make arguments, and the Court being fully advised in the premises, the Court herewith makes the following Findings of Fact and Conclusions of Law and Order:

1. Plaintiff is a corporation duly organized and existing under the laws of the State of Illinois and is engaged in commerce within the meaning of the Labor-Management Relations Act as amended, 29 USCA, Section 152 (2) and (7). It operates a coal mine near Newman, Illinois known as Zeigler No. 5 Mine and one near Murdock, Illinois, known as Murdock Mine.

2. Defendants, Local Union No. 1870 and Local Union No. 8682, United Mine Workers of America, are unincorporated labor organizations representing employees in an industry affecting commerce within the meaning of Section 2 (5) and Section 2 (7) of said Labor-Management Relations Act, 29 USCA 152 (5) and (7).

3. This action arises under Section 301 of the Labor-Management Relations Act as amended, 61 Stat. 156, 29 USC Section 185.

4. Plaintiff and Defendants, Local Unions 1870 and 8682, are parties to and operate under a labor contract entitled 1974 National Bituminous Coal Wage Agreement. By virtue of said contract, Local 1870 is the representative of employees at Zeigler No. 5 Mine, and Local 8682 is the representative of employees at Plaintiff's Murdock Mine.

5. All of the acts referred to herein transpired within the Eastern Judicial District of Illinois.

6. The contract referred to above provides that all disputes and local trouble between the parties thereto including those of the kind set forth below herein shall be subject to the grievance procedure detailed therein and shall if necessary be settled and resolved by final and binding arbitration which arbitration procedure is made mandatory upon the

parties to the exclusion of resorting to self help through strikes or work stoppages.

7. That in violation of their duty under the National Contract, the Defendants encouraged, commanded, cajoled, and otherwise persuaded members of the respective locals scheduled to work the 12:01 a.m. shift on August 13, 1975 at Plaintiff's Murdock Mine and those scheduled to work the 8:00 a.m. shift on August 13, 1975, at Plaintiff's No. 5 Mine, to refrain from working, as a result of which the shifts scheduled to work at those times failed to work, but instead struck and shutdown all work at Plaintiff's Zeigler No. 5 Mine and Murdock Mine, even though a full work schedule existed.

8. That the walkout and work stoppage concerned Defendants' dissatisfaction with the Plaintiff's policy of shift rotation at its No. 5 and Murdock Mines, which is a dispute required to be resolved under the grievance arbitration mechanism of the National Contract.

9. That at or about the hour of 10:00 a.m. on August 15, 1975, this Court issued a Temporary Restraining Order enjoining Defendants from continuing the work stoppages referred to in Paragraph 7; and, that the said Temporary Restraining Order was duly served upon Robert Brackney, President of Defendant Local 1870 and Walter Barnett, Jr., President of Defendant Local 8682, at or about 11:30 a.m. August 15, 1975; but, that in contravention thereof, Defendants failed to return to work but instead continued in said work stoppage and walkout.

10. That as a result of the work stoppage referred to in Paragraph 7, Plaintiff has lost 166,780 tons of scheduled production of coal (all of which was committed under

current supply contracts) based on three 8-hour shifts per day, 6 days a week of scheduled work or 61 shifts which were not worked to date; that scheduled production at the Zeigler No. 5 Mine was and is 2,666 tons per shift, and at the Murdock Mine, 2,800 tons per shift.

11. That Defendant Local 1870 previously was sued by Plaintiff for an injunction in connection with illegal wildcat strikes which began April 4, 1974, May 1, 1974, August 1, 1974, March 12, 1975, and July 16, 1975 at Plaintiff's Zeigler No. 5 Mine, and that on August 7, 1974, this Court issued a Preliminary Injunction prohibiting this Defendant from violating the grievance arbitration provisions of the prior contract between the parties and from engaging in any striking or work stoppage, interruption of work or picketing at Plaintiff's mines, and that on March 12, 1975, this Court issued a Temporary Restraining Order prohibiting the Defendant Local 1870, from engaging in any and all strikes, work stoppages, interruptions of work or picketing the Plaintiff's Zeigler No. 5 Mine involving *bathhouse facilities*, and that the said Order continues in full force and effect; that Defendant Local 8682 previously was sued by Plaintiff for an injunction in connection with illegal wildcat strikes which began May 1, 1974 and May 29, 1974, under the old contract at Plaintiff's Murdock Mine, and that on May 7, 1974, this Court issued a Preliminary Injunction prohibiting this Defendant from violating the grievance arbitration provisions of the prior contract between the parties and from engaging in any striking or work stoppage, interruption of work or picketing at Plaintiff's mines over disputes involving work assignment.

12. The walkouts referred to above in the preceding paragraph occurred in violation of the provision for settlement of disputes of the collective bargaining agreement aforesaid.

13. Plaintiff has at all times been willing to submit the disputes involved in the instant walkout to final and binding arbitration.

14. Plaintiff has made a showing that a permanent injunction is appropriate in this proceeding despite the anti-injunction provision of the Norris LaGuardia Act. 29 USC, Section 104; *Boys Markets, Inc. v. Retail Clerks Union Local No. 770*, 398 US 235 (1970); *Old Ben Corporation v. Local 1487, United Mine Workers*, 457 F2d 162 (1972); *Old Ben Corporation v. Local 1487, United Mine Workers, et al.*, 500 F2d 950 (1974).

15. A substantial loss of coal production per day has been suffered during the instant walkout with result in financial losses to the Plaintiff, the miners at Plaintiff's Zeigler No. 5 and Murdock Mines have received no wages during the walkout.

16. It appears to the Court that the Plaintiff will suffer immediate and irreparable injury, harm and damage if a preliminary injunction is not issued, that Plaintiff has no adequate remedy at law and that Plaintiff will suffer more from denial of an Injunction than Defendants will suffer if the relief is granted.

ACCORDINGLY,

IT IS, THEREFORE, ORDERED that, pending further Order of this Court, Local Union No. 1870 and Local Union No. 8682, United Mine Workers of America and all persons acting in concert and participation with them be and they are hereby enjoined and restrained from engaging in any strike or work stoppage, interruption of work or picketing of Plaintiff's Zeigler No. 5 or Murdock Mine, or at any other of Plaintiff's mines wherever located because of any dispute, disagreement or

local trouble of any kind which is required to be settled through the grievance and arbitration provisions or other procedure of the 1974 National Bituminous Coal Wage Agreement, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Injunction shall remain in effect indefinitely pending further Order of this Court.

ENTERED THIS 25 DAY OF AUGUST, A.D. 1975.

/s/ HENRY S. WISE

CHIEF JUDGE

Appendix D

Article XXIII—SETTLEMENT OF DISPUTES

Section (a) **Mine Committee**

A committee consisting of at least three Employees shall be elected at each mine by the Employees at such mine. Each member of the Mine Committee shall be an Employee of the mine at which he is a committee member, and shall be eligible to serve as a committee member only so long as he continues to be an Employee of said mine. The duties of the Mine Committee shall be confined to the adjustment of disputes arising out of this Agreement that the mine management and the Employee or Employees fail to adjust. The Mine Committee shall have no other authority or exercise any other control nor in any way interfere with the operation of the mine; for violation of this section any and all members of the committee may be removed from the committee.

A Mine Committee member shall not be suspended or discharged for his official actions as a Mine Committee member. An Employer seeking to remove a Mine Committee member shall so notify the affected Mine Committee member and the other members of the Mine Committee. If the Mine Committee objects to such removal, the matter shall be submitted directly to arbitration within 15 calendar days from such objection. If the other members of the Mine Committee so determine, the affected member shall remain on the Mine Committee until the case is submitted to and decided by an arbitrator. If the Employer requests removal of the entire Mine Committee, the matter automatically shall be submitted to arbitration within 15 calendar days after such request, and the Mine Committee will continue to serve until the case is submitted to and decided by an arbitrator.

Section (b) **Arbitration Review Board**

1. Within 60 days following the effective date of this Agreement, the United Mine Workers of America and the Bituminous Coal Operators' Association will establish an Arbitration Review Board composed of one representative of the UMWA, one representative of the Employer, and a chief umpire to be jointly selected by both parties. This 60-day period may be extended by mutual agreement.

2. The chief umpire jointly selected by the parties shall serve for the balance of this Agreement, unless removed by formal resolution adopted by either the International Executive Board of the United Mine Workers of America or the Board of Directors of the Bituminous Coal Operators' Association.

3. In the event of removal, resignation, death or incapacity of the chief umpire, the president of the UMWA and the president of the B.C.O.A. shall endeavor to select a mutually acceptable successor within 15 days. In the event the parties fail to agree, they shall request the aid of the Federal Mediation and Conciliation Service in selecting a mutually acceptable successor. The composition of the panel may be considered by the parties at the time when renewal agreements are being negotiated.

4. The presidents of the UMWA International Union and the B.C.O.A. shall jointly establish a panel of impartial arbitrators for each UMWA district. These panels may be changed, augmented or supplemented by mutual consent of the appointing parties. Arbitrators may be removed from a panel by either party upon 10 days advance written notice.

Section (c) **Grievance Procedure**

Should differences arise between the Mine Workers and the Employer as to meaning and application of the provisions of this Agreement, or should differences arise about matters not

specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time.

Disputes arising under this Agreement shall be resolved as follows:

1. The Employee will make his complaint to his immediate foreman who shall have the authority to settle the matter. The foreman will notify the Employee of his decision within 24 hours following the day when the complaint is made.

2. If no agreement is reached between the Employee and his foreman, the complaint shall be taken up within 7 working days of the foreman's decision by the mine committee and mine management. Where the committee consists of more than three members, the Employer shall have the right to meet with a maximum of three (to be chosen by the mine committee). The committee and management will complete the standard grievance form stating the Employee's grievance and the response of management.

3. If no agreement is reached by the committee and management within 7 working days after the complaint is taken up by them, the grievance shall be referred to a representative of the UMWA district, designated by the Union, and a representative of the Employer. Within 7 working days of the time the grievance is referred to them, the representative of the Union and the Employer shall review the facts and pertinent contract provisions in an effort to reach agreement. Unless both parties consent, no verbatim transcript of testimony shall be taken. Following the meeting, should they fail to settle the grievance, the representatives shall prepare a concise, joint statement. In the joint statement the Union and Employer will each set forth its views of the facts and its position on the contractual issues. The joint statement shall be signed by the representative of the UMWA district and the representative of the Employer. Neither the Union's representative nor the Employer's shall be persons who participated in steps one or two of this procedure.

4. In cases where the district representative and the representative of the Employer fail to reach agreement, the matter shall, within 10 calendar days after referral to them, be referred to the appropriate panel arbitrator who shall decide the case without delay. Cases shall be assigned to panel arbitrators in rotation. Unless testimony has been taken at step 3, at the earliest possible time, but no later than 15 days after referral to him, the arbitrator shall conduct a hearing in order to hear testimony, receive evidence and consider arguments. In cases where a transcript has been made at step 3, the arbitrator shall have the discretion to conduct a supplementary hearing at or near the mine site. In cases in which the parties have made no transcript at step 3, and the joint statement indicates that there is no question of fact involved in the grievance, the arbitrator may decide the case without a transcript and upon the basis of the joint statement of the parties, exhibits and briefs. The arbitrator's decision shall be final except as provided in paragraph 5 herein, and shall govern only the dispute before him. Expenses and fees incident to the service of an arbitrator shall be paid equally by the Employer or Employers affected and by the UMWA district affected.

5. Either party to an arbitration, upon receiving a final award by a panel arbitrator, may petition the Arbitration Review Board to appeal the decision of the panel arbitrator. Such petition shall include a statement of the grounds for the appeal, which shall consist of one or more of the following:

(i) That the decision of the panel arbitrator is in conflict with one or more decisions on the same issue of contract interpretation by other panel arbitrators.

(ii) That the decision involves a question of contract interpretation which has not previously been decided by the Board, and which in the opinion of the Board involves the interpretation of a substantial contractual issue.

(iii) That the decision is arbitrary and capricious, or fraudulent, and therefore, must be set aside.

Upon receipt of such petition, the Arbitration Review Board shall review the decision of the panel arbitrator to determine whether grounds for appeal exist. If not, the Board will so inform the parties. If so, the Board shall review the decision of the panel arbitrator making whatever changes are necessary to assure that the final decision correctly resolves all contractual questions and issues presented, and is consistent with prior decisions of the Board. The Board's decision shall be made by majority vote, and it shall issue its decision within fifteen days. Following review, the Board shall countersign its decision and transmit a copy to each party.

Section (d) **Fifteen Day Limitation**

Any grievance whichis not filed by the aggrieved party within fifteen calendar days of the time when the Employee reasonably should have known of it, shall be denied as untimely and not processed further.

Section (e) **Earnest Effort to Resolve Disputes**

An earnest effort shall be made to settle differences at the earliest practicable time. Where an Employee makes a complaint during work time, the foreman shall, if requested to do so, and if possible, consistent with continuous production, discuss the matter briefly on the spot.

Section (f) **Employee's Right to Presence of Member of Mine Committee**

Except where it will interfere with production, an Employee shall be entitled, at his request, to have a member of the Mine

Committee present to assist him at any discussion with his foreman held pursuant to section (c)(2) of this Article.

Section (g) **Right of Grievant to be Present**

The grievant shall have the right to be present at each step of the grievance procedure until such time as all evidence is taken.

Section (h) **Finality of Decision or Settlement**

Settlements reached at any step of the grievance procedure shall be final and binding on both parties and shall not be subject to furthr proceedings under this Article except by mutual agreement. Settlements reached at steps 2 and 3 shall be in writing and signed by appropriate representatives of the Union and the Employer.

Section (i) **Exclusion of Legal Counsel**

Neither party will be represented by an attorney licensed to practice law in any jurisdiction in any of the steps of the grievance procedure except by mutual agreement applicable only to a particular case.

Section (j) **Expenses of Chief Umpire**

The expenses of the chief umpire, and his necessary office and staff expenses will be shared equally by the BCOA and the UMWA.

Section (k) **Circulation of Approved Decisions**

Panel arbitrators shall be furnished promptly with copies of all decisions entered by the Board. The chief umpire through his staff shall prepare a looseleaf binder which shall contain summaries of the Board's decisions with respect to contractual issues arising under the Agreement. The binder shall be organized along the lines of the Agreement and shall be indexed by subject matter and case title. The binder shall be maintained by the chief umpire through his staff on a current basis and copies of any pages changed to reflect new decisions shall be provided to the parties on a monthly basis.

Section (l) **Waiver of Time Limits**

By agreement the parties may waive the time limits set forth in each step of the grievance procedure.

Section (m) **Settlement of Differences or Disputes During the First Sixty Days of this Agreement**

During the first sixty days of this Agreement, or thereafter by a mutually agreed extension, the parties hereto agree to resolve differences or disputes covered by this Article in accordance with the Settlement of Disputes provisions of Article XVII of the National Bituminous Coal Wage Agreement of 1971 which is adopted and incorporated herein by reference.

Article XXVII—MAINTAIN INTEGRITY OF CONTRACT AND RESORT TO COURTS

The United Mine Workers of America and the Employers agree and affirm that, except as provided herein, they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Disputes" Article of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract and by collective bargaining without recourse to the courts.

The Employer, however, expressly authorizes the Union to seek judicial relief, without exhausting the grievance machinery, in cases involving successorship.

Appendix E

STATUTE INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. §185(a) provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-1201

ZEIGLER COAL COMPANY,
Petitioner,

v.

LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA and LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA,
Respondents.

BRIEF OF RESPONDENTS OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

THOMAS GUMBEL
RUNGE & GUMBEL, P.C.
501 Belt Line Road
Collinsville, Illinois 62234
Counsel for Local Union No. 1870, United Mine Workers of America and Local Union No. 8682, United Mine Workers of America, Respondents

April, 1978

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-1201

ZEIGLER COAL COMPANY,
Petitioner,

v.

LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA and LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA,
Respondents.

BRIEF OF RESPONDENTS OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Respondents, Local Union No. 1870, United Mine Workers of America and Local Union 8682, United Mine Workers of America, respectfully pray that the Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on December 1, 1977 be denied.

QUESTION PRESENTED

Whether the District Court and Court of Appeals for the Seventh Circuit erred in finding that a sympathy strike engaged in by Local Unions 1870 and 8682, United Mine Workers of

America, precipitated by the honoring of a stranger picket line, was not 'over an arbitrable dispute' and therefore not a violation of a pre-existing preliminary injunction enjoining strikes over 'arbitrable disputes' and in refusing to hold those Local Unions in contempt of that order.

STATUTES INVOLVED

This case involves the Norris-LaGuardia Act, 29 USC §101 et seq. and Section 301 of the Labor Management Relations Act, 29 USC Section 185(a).

STATEMENT OF THE CASE

Petitioner, Zeigler Coal Company, originally brought this action under Section 301 of the Labor Management Relations Act, as amended, 29 USC Section 185. That action was commenced because of a work stoppage which took place in 1975 over an issue which involved the right of Petitioner to maintain "shift rotation." After a hearing on the preliminary injunction, an order was issued in the District Court which enjoined Respondents, Local Unions 1870 and 8682, United Mine Workers of America, from engaging in any strike because of "any dispute, disagreement or local trouble of any kind which is required to be settled through the grievance and arbitration provisions or other procedures of the 1974 National Bituminous Coal Wage Agreement . . ."

When a subsequent work stoppage began on or about July 30, 1976, Petitioner filed a motion to punish the Local Unions for contempt of that order which motion stated in part as follows:

> "The work stoppage now in progress at plaintiff's mines was initiated by picketers belonging to another U.M.W.A. Local Union located at Keensburg in Wabash County, Illinois, which lies within the Eastern Judicial District of Illinois. Two such picketers appeared at both the Zeigler No. 5 and Murdock Mines at or about 11:00 p.m., July 29, 1976, and leafleted plaintiff's employees who were arriving in preparation for the midnight shift. Since then, no work has occurred, . . ." (A.23)

Petitioner neither alleged nor proved any other cause for the work stoppage which was the subject of this action for contempt. After a hearing, the District Court found the local unions had engaged in a sympathy strike as a supposed demonstration of union solidarity and that the walkout was not "over any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract" citing the recent decision of the United States Supreme Court in *Buffalo Forge Company v. United Steelworkers of America, A.F.L./C.I.O.*, 428 U.S. 397 (1976). Since the Court found that there was no arbitrable dispute underlying the work stoppage, there could be no violation of the existing injunction which had been fashioned in accordance with *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970), and the motion for contempt was denied. This order was affirmed by the Seventh Circuit Court of Appeals.

ARGUMENT

The Decision of the District Court Affirmed by the Court of Appeals for the Seventh Circuit Denying Petitioner's Motion to Hold the Local Unions in Contempt Was Proper Because a Sympathy Strike or Work Stoppage Resulting From the Honoring of Picket Line Was Not a Strike Over an Issue Which Was Subject to the Grievance and Arbitration Procedure of the National Bituminous Coal Wage Agreement of 1974 and That Decision Is Consistent With the Supreme Court's Decision in Buffalo Forge v. United Steel Workers That Sympathy Strikes Are Not Enjoinable in an Implied-No-Strike Context.

In its recent landmark decision in *Buffalo Forge Co. v. United Steel Workers of America*, 428 U.S. 397 (1976), the United States Supreme Court considered an arbitration clause almost identical to that contained in the 1974 National Bituminous Coal Wage Agreement which is at issue in this case, and determined that a sympathy strike, that is, one resulting from the honoring of a sister local union's picket line, did not give rise to a dispute arbitrable under that clause and therefore was not enjoinable under *Boys Markets v. Retail Clerks*, 398 U.S. 235 (1970) and Section 301 of the Labor Management Relations Act. The Court reaffirmed the vitality of the anti-injunction provisions of the Norris-LaGuardia Act, 29 U.S.C. Section 101 et seq. and countermanded the broad scope which several circuits had given to the *Boys Markets* decision to the effect that a sympathy strike "over an arbitrable issue". To that issue, the Court specifically stated:

> *To the extent that the Court of Appeals, 517 F.2d, at 1211, and other Courts,* Island Creek Coal Co. v. United Mine Workers, 507 F.2d 650, 653-654 (CA 3), cert. denied, 423 U.S. 877 (1975); Armco Steel Corp. v. United Mine Workers, 505 F.2d 1129, 1132-1133 (CA 4 1974),

> cert denied, 423 U.S. 877 (1975); Amstar Corp. v. Amalgamated Meat Cutters, 468 F.2d 1372, 1373 (CA 5 1972); *Inland Steel Co. v. Local Union No. 1545, U.M.W., 505 F.2d 293, 299-300 (CA 7 1974), have assumed that a mandatory arbitration clause implies a commitment not to engage in sympathy strikes, they are wrong.* (*Buffalo Forge*, at p. 407, n. 10).

Of equal significance, even the four dissenting Justices agreed that "an implied no strike clause does not extend to sympathy strikes." *Buffalo Forge*, at 410, n. 17 (dissent). Thus, all members of the Court agreed that an implied no strike duty, such as that contained in the contract involved in this case, is no basis for injunctive restraint of sympathy strikes.

In affirming the District Court and the United States Court of Appeals for the Second Circuit which had refused to issue an injunction, the Court stated as follows:

> *Boys Markets* plainly does not control this case. The District Court found, and it is not now disputed, that the strike was not over any dispute between the Union and the employer that was even remotely subject to the arbitration provision of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither it's causes nor the issue underlying it were subject to the settlement procedures provided by the Contract between the employer and respondents. The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain. Thus, *had the Contract not contained a no strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the sympathy strike in this case.* (*Gateway Coal Co. v.*

Mine Workers, supra, at 382). (Emphasis added.) 428 U.S. at 406

There was not an express no strike clause or exclusion of sympathy strikes in the National Bituminous Coal Wage Agreement of 1974 which was in effect between the parties to this action. The only duty not to strike is an implied obligation not to strike over disputes subject to the arbitration agreement. *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368 (1974), *Old Ben Coal Corp. v. Local Union 1487, United Mine Workers of America*, 457 F.2d 162 (7th Cir. 1972).

The arbitration clause considered by the Court in *Buffalo Forge* was virtually identical to that contained in the contract in this case. Petitioner's imaginative effort to convert a sympathy strike or a work stoppage resulting from the honoring of a picket line into a strike over an arbitrable dispute in violation of the collective bargaining agreement must fail in light of the Supreme Court's recent decision which has settled this specific issue. In the absence of an allegation of a dispute at Respondent's mines which was subject to the grievance and arbitration procedure, the denial of the Motion to Punish for Contempt was properly affirmed by the Court of Appeals just as a request for injunctive relief in the first instance over such activity would have to have been denied because the complaint would simply have failed to state a cause of action under Section 301 of the Labor Management Relations Act.

Petitioner's assertion that the sympathy strike in this case is distinguishable from *Buffalo Forge* must be rejected as it was in *Southern Ohio Coal Company v. United Mine Workers of America, et al.*, 551 F.2d 695 (6th Cir. 1977), cert. den. 434 U.S. — (1977) which involved suits for injunctive relief arising out of stranger picketing similar to the present case. In that case the Court of Appeals for the Sixth Circuit stated:

> "The Company attempts to distinguish the sympathy strike in *Buffalo Forge* from the refusal to cross in this case by

contending that in *Buffalo Forge* the primary pickets and the sympathy strikers were members of different bargaining units, whereas in this case the stranger pickets and the local miners are all members of the same bargaining unit working under a single national contract. Thus, the employer reasons, the membership of the local unions stands to benefit from resolution of the primary strike favorable to the mineworkers. Just why this is so the Company does not elaborate. By claiming that the local miners have adopted the goals of the illegal strike, without being explicit as to their nature, the Company is asking this Court to conclude that this is not really a refusal-to-cross situation but a case where the locals have joined an illegal primary strike over arbitrable issues—a paradigm case for a *Boys Markets* injunction. This we decline to do. The Bituminous Coal Wage Agreement provides that local disputes be grieved and arbitrated on a mine-by-mine basis. The only benefit to be derived by the local unions from favorable settlement of the West Virginia strike is indirect, at best, and highly speculative. Accordingly, the bare assertion that all mine workers are members of the same bargaining unit and working under a national contract adds little to the central inquiry in *Boys Markets* case—whether the employees sought to be enjoined are striking over issues which they have agreed to arbitrate. We cannot conclude on the present state of the record that the locals' refusal to cross the stranger picket lines amounted to ratification of and active participation in an illegal strike. (See Slip Opinion at p. 12, 13)."

In like manner, that Court also rejected the contention of the plaintiff that is also made in this case that the legality or illegality of the primary picketing is a valid basis for distinguishing *Buffalo Forge*.

> "Nor do we believe that the legality or illegality of the primary picketing is a valid basis for distinguishing *Buffalo Forge*. The Company contends that a court must issue

an injunction against a union which refuses to cross an illegal picket line or else it sanctions open support of illegal conduct. The Company claims it would be anomalous to regard a secondary strike as non-enjoinable when it is in support of a primary strike which is illegal, and hence enjoinable. The glaring defect in this argument is that it improperly shifts the focus of the court's inquiry from the employees against whom the injunction is sought to the illegal pickets. Not only does this raise problems of proof because the initial strikers will often not be parties to the action, but it also places the burden of making complex judgments as to the legality of the primary line on the employees faced with the decision whether or not to cross. If they refuse to cross, they run the risk of injunction, damages and civil contempt. Both *Boys Markets* and *Buffalo Forge* teach quite explicitly that the proper focus of judicial attention is a Section 301(a) injunctive action should be on the employees sought to be enjoined. The "narrow exception" to the Norris-LaGuardia Act perceived in *Boys Markets* may only be invoked where the union defending the action has struck "over a grievance which both parties are contractually bound to arbitrate." 398 U.S. at 254. As the Supreme Court reiterated in *Buffalo Forge*, 'there is no general federal anti-strike policy'. 44 U.S.L.W. at 5350, citing *Sinclair Refining Co. v. Atkinson*, 370 U.S. at 225 (Brennan, Jr., dissenting). It is only when an injunction is required to vindicate the contractual arbitration process that the anti-injunction policy of the Norris-LaGuardia Act will be accommodated to satisfy the public policy favoring peaceful settlement of labor disputes through arbitration. *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. at 253. The key to issuance of a *Boys Markets* injunction is a finding that the issue underlying the work stoppage is arbitrable. In this case however, the District Court found that there was "no arbitrable grievance underlying the work stoppage", but

rather the work stoppage resulted from the miners' reluctance to cross the stranger picketlines. Thus, as in *Buffalo Forge*, whether motivated by sympathy or fear of reprisal, the work stoppage was not caused by an arbitrable dispute between the mine workers and the employer. The strike had "neither the purpose or the effect of denying the employer of his bargain." *Buffalo Forge Co. v. United Steelworkers of America*, 44 U.S.L.W. at 5349. *Accord, U.S. Steel Corp. v. United Mine Workers*, 418 F.Supp. 172, 174-175 (W.D. Pa. 1976) aff'd — F.2d— (3d Cir. Dec. 20, 1976). See also *Plain Dealer Publishing Co. v. Cleveland Typo. Union No. 53*, 520 F.2d 1220 (6th Cir. 1975). The legality of the primary picketing is irrelevant.

That Court went on to speak directly to the application of *Buffalo Forge* to the 1974 National Bituminous Coal Wage Agreement.

> "The Bituminous Coal Wage Agreement of 1974 does not contain an express no-strike clause so the issue of the union's right to refuse to cross a picketline is not even arguably arbitrable. Since the unions' refusal to cross the stranger picketlines did not involve an arbitrable dispute between the employer and its employees, it is non-enjoinable, see *Buffalo Forge Co. v. Retail Clerks Union*, 44 U.S.L.W. at 5355 n. 20 (dissent), and therefore cannot provide a basis for contempt citations. See *United States Steel Corp. v. United Mine Workers of America*, 519 F.2d 1236, 1249 (5th Cir. 1976).

The United States Court of Appeals for the Third Circuit has also recently had an opportunity to reconsider its position on the sympathy strike question in light of *Buffalo Forge* as it relates to the 1974 National Bituminous Coal Wage Agreement in *United States Steel Corporation v. United Mine Workers of America, et al.*, 548 F.2d 67 (3d Cir., 1977). The Third Cir-

cuit had previously ascribed in *Island Creek Coal Company v. U.M.W.*, 507 F.2d 650 (3rd Cir. 1974) to the same rationale as that previously adopted by the 7th Circuit in *Inland Steel*. Stating its belief that the Supreme Court's decision in *Buffalo Forge* "undercuts the vitality of *Island Creek*, that court reversed a judgment on a jury verdict in favor of the plaintiff/employer for money damages for a strike resulting from the refusal of the union members to cross a stranger picket line on the basis that such a strike was not "over any dispute between the union and the employer that was subject to arbitration."

In another unique attempt to avoid the specific language of *Buffalo Forge*, Petitioner would have this Court develop a separate body of Federal Labor Law applicable to the coal industry on the theory that a dispute at any U.M.W.A. mine is a dispute at all U.M.W.A. mines and erroneously represents to the Court that all U.M.W.A. mines are members of a single bargaining unit. This novel argument conveniently overlooks the law and reality of appropriate bargaining units and the plain wording of the 1974 contract.

It has been established by numerous courts that the district and local unions affiliated with the International Union, United Mine Workers of America are self governing autonomous organizations. See *Hodgson and Trbovich v. United Mine Workers of America*, 344 F. Supp. 990, 475 F. 2d 1293 (C.A.D.C. 1973); *Monborne et al. v. U.M.W.A., et al.*, 353 F. Supp. 255 and *Cross et al. v. U.M.W.A., et al.* (353 F. Supp. 504) (S.D. Ill. 1973).

The employees at each mine of each employer are represented by a separate local union, each with their own officers. Each local union has a separate seniority system, separate books and records, separate meeting halls, separate union funds, and, perhaps most importantly, for the most part, separate employers as in the present case.

Moreover, it is well established that arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit. *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960). In fact the United States Court of Appeals for the Fourth Circuit recently ruled in *Consolidation Coal Co. v. United Mine Workers of America*, 537 F.2d 1226 (4th Cir. 1976), that the contract limits the scope of the grievance procedure to a single mine site and that the United Mine Workers have never agreed to arbitrate grievances arising at other mines.

> It is true, of course, that such a contract could be worded so as to control conduct by other locals and other members not employed by an employer, but that is a matter of agreement between the parties, and it is clear that this contract does not go so far.

Such a right would be dependent upon recognition in the contract and a grievance mechanism created by contract to resolve such disputes. There is no such right against foreing locals and no such grievance in the 1974 National Bituminous Coal Wage Agreement. This conclusion is unsupported by contractual language contained in the Settlement of Disputes provision of the Agreement, Article XXIII Section (a) provides:

> "A committee consisting of at least three (3) employees shall be elected at each mine by the employees at such mine. Each member of the mine committee shall be an employee of the mine at which he is a committee member, and shall be eligible to serve as a committee member only so long as he continues to be an employee of such mine. The duties of the mine committee shall be confined to the adjustment of disputes arising out of this agreement that the mine management and the employee or employees fail to adjust. The mine committee shall have no other authority or exercise any

other control nor in any way interfere with the operation of *the* mine for violation of this section any and all members of the committee may be removed from the committee."

Article XXIII, Section (c) provides that the mine committee and employer use the grievance procedure to resolve only "local trouble of any kind . . . at *the* mine", and Article XXIII Section (c)(4) provides that the decision of the panel arbitrator disposing of such disputes "shall govern only the dispute before him." Thus the language of the grievance procedure demonstrates that it is applicable only to grievances arising at the mine since grievances arising at other mines have not been included in that process and the party cannot be required to submit to arbitration any dispute which he has not agreed to submit. *United Steelworkers of America v. Warrior & Gulf Navigation Co.* supra. See also, *Fabijanic v. Sperry Gyroscope Division*, 370 F. Supp. 62 (1974) and *Local 464, American Bakery & Confectioners Workers International Union v. Hershey Chocolate Corporation*, 310 F.Supp. 1182, aff'd per curiam 433 F.2d 926 (3rd Cir. 1970) in which Court refused to compel arbitration between the company and union which represented employees at a separate unit or subdivision of the common parent employer because there was no contract between them requiring arbitration.

Although Petitioner claims that Respondents had an interest in the resolution or outcome of the dispute in West Virginia where the dispute originated, it is not explained what the dispute was, how Respondent had an interest, how Petitioner could have been compelled to accede to the union demand, and, therefore, how Petitioner was deprived of its bargain to arbitrate disputes between it and its employees.

It is clear, therefore, that the issue of the enjoinability of sympathy strikes in this context has been settled by this Court in the

Buffalo Forge decision and that the Court's judgment as affirmed by the Seventh Circuit Court of Appeals is consistent with that decision. It is equally clear that the decision of the Seventh Circuit Court of Appeals is not in conflict with other courts of appeals on this same matter. Petitioner's representation that courts of appeals have taken widely divergent positions on this issue in the coal industry (Petitioner's Brief, page 12) is erroneous and misleading.

The Court of Appeals for the Fourth Circuit did rule that a sister local union could be enjoined in an alleged sympathy strike situation despite *Buffalo Forge* for the reasons that those employees 1) had the same employer, 2) were working at the same location, 3) in the same bargaining unit, 4) under the same contract, 5) had adopted sister local's cause as its own and 6) inferentially, could clearly benefit by a capitulation of its employer on the local dispute which had given rise to the work stoppage.

More importantly, in the same case, the Fourth Circuit refused to enjoin members of another local union employed by Southern Ohio Coal Company who had honored picket lines established by employees of Cedar Coal Company where the primary dispute arose. Following *Buffalo Forge*, that Court noted that those employees 1) had a different employer, 2) were in a different bargaining unit, 3) had no dispute arbitrable with Cedar Coal Company and 4) could not cause their employer. Southern Ohio Coal Company, to concede the issue causing the dispute at the Cedar Coal Local because there was no contract between Southern Ohio Coal Company and the Cedar Coal local. *Cedar Coal Company v. U.M.W.A.*, 560 F.2d 1154 (4th Cir. 1977), cert. den. 434 U.S.—(1978).

The other case cited by Petitioner as being "widely divergent" from *Buffalo Forge, Republic Steel Corp. v. U.M.W.A.*, 570 F. 2d 467 (1978), is likewise clearly distinguishable on

the facts. That case was an action for money damages, not for injunctive relief. In an action for money damages, the anti-injunctive provisions of the Norris-LaGuardia Act are not applicable (*United States Steel v. United Mine Workers of America*, 548 F. 2d 67 (3rd Cir. 1976). Moreover, the theory on which the Court of Appeals remanded that case was on the International Union's alleged failure to take reasonable efforts to halt the spread of unlawful picketing and was directed to the International Union only, not local or district organizations. Equally as important, Petitioner did not advance this theory in the District Court or Court of Appeals. As noted in the decision of the Seventh Circuit:

> Zeigler states that the local's right to honor stranger pickets is an issue subject to arbitration under the governing collective bargaining agreement, which provides for arbitration of "any local trouble of any kind arising at the mine." Accordingly, Zeigler reasons, by honoring the stranger pickets the locals were striking over an arbitrable issue and thus had violated the District Court's *Boys Market Injunction*." (Zeigler Coal Company v. Local Unions 1870 and 8682, United Mine Workers of America, Petitioner's Brief, Appendix A, Page 22)

Although *Buffalo Forge* has been cited with approval by numerous other courts, Petitioners have not cited and Respondents have not found any decisions on similar facts which are in conflict with the decision of the Seventh Circuit Court of Appeals or with the issue previously settled by this Court in *Buffalo Forge v. United Steel Workers*, supra.

It is important to confirm that *Buffalo Forge* as applied to this labor contract does not do violence to the long standing pro-arbitration policy which is central to federal labor law or to the arbitral process of this agreement. At most it checks the steady erosion of the anti-injunction policy expressed in the Norris-LaGuardia Act and applied by the Supreme Court

in *Sinclair Refining v. Atkinson*, 370 U.S. 195 (1962), until its decision in *Boys Markets v. Retail Clerks*, supra, in 1970. In that case the Court carved out a "narrow exception" to the anti-injunction policy of Norris LaGuardia in situations where a strike is precipitated by a dispute over which the striking local and the employer have agreed to arbitrate. The *Boys Markets* decision resulted from the desire of the Court to "accommodate" the strong federal policy against anti-strike injunctions and the equally vibrant federal policy favoring the vindication of the arbitral process. Although the *Boys Markets* Court took pains to note that it was not vitiating Norris-LaGuardia, some circuit courts have expanded that decision over the question of what constituted an "arbitrable dispute" for the purpose of entitlement to relief under Section 301 L.M.R.A. It was to resolve this conflict and confirm the "narrowness" of its holding in *Boys Markets* that the Supreme Court rendered its opinion in *Buffalo Forge* which instructs that federal courts must limit injunctions to cases in which a strike has been "precipitated by a dispute between union and management that was subject to binding arbitration under the provisions of the contract." *Buffalo Forge* at 405.

CONCLUSION

Since the issue on which this case was decided in the lower courts was clearly settled in ***Buffalo Forge v. United Steel Workers***, supra, and it is not in conflict with decisions of other Courts of Appeals on the same matter and under similar circumstances, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

THOMAS GUMBEL
RUNGE & GUMBEL, P.C.
501 Belt Line Road
Collinsville, Illinois 62234
Counsel for Local Union No. 1870, United Mine Workers of America and Local Union No. 8682, United Mine Workers of America, Respondents

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1201

ZEIGLER COAL COMPANY, *Petitioner,*

v.

LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA AND LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA, *Respondents.*

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC. IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

GUY FARMER
FARMER, SHIBLEY, MCGUINN & FLOOD
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for the Bituminous Coal Operators' Association, Inc.

March 1978

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1201

ZEIGLER COAL COMPANY, *Petitioner,*

v.

LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA AND LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA, *Respondents.*

On Petition For A Writ of Certiorari To The United States Court of Appeals for the Seventh Circuit

---

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Bituminous Coal Operators' Association, Inc. ("BCOA"), by its undersigned counsel, having received consent from Petitioner, but not from the Respondents, moves pursuant to Rule 42 of the Supreme Court Rules that the Court grant it leave to file the enclosed Brief *Amicus Curiae* in support of the Petition for Writ of Certiorari.

BCOA'S INTEREST AND WHY THE FILING IS DESIRABLE

BCOA is a national association of bituminous coal producers, organized in 1950 and continuing in being until the present time. BCOA has approximately 130 members including the major coal producers in all of the bituminous coal mining states. Its members produce about 75 percent of the coal mined under the National Bituminous Coal Wage Agreement. BCOA negotiates and assists in interpreting this Agreement.

BCOA was organized for the purpose of attempting to help bring stability out of chaos in employer-employee relations in the coal industry. These efforts have been successful to a large degree, but the continued increase in the incidence and magnitude of wildcat strikes in recent years has presented an imminent threat to the production of coal and to the stability of employment in the coal industry.

This case is before the Court on a Petition for a Writ of Certiorari by the Zeigler Coal Company. If the Writ is issued, the Court's decision should establish legal guidelines to determine the application of the recent *Buffalo Forge* decision, 428 U.S. 397, 96 S.Ct. 3141 (1976), to the recurring wildcat strikes in the coal industry. This will have substantial and even crucial impact on the effectiveness and integrity of the agreements between BCOA and the United Mine Workers of America ("UMWA") and on the ability of the bituminous coal industry to meet the Nation's need for coal.

All BCOA members will be affected by the decision of this Court.

WHEREFORE, BCOA moves the Court to allow the filing of the Brief *Amicus Curiae*, which is submitted herein with the requisite number of printed copies.

Respectfully submitted,

GUY FARMER
FARMER, SHIBLEY, MCGUINN & FLOOD
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for the Bituminous Coal Operators' Association, Inc.

TABLE OF CONTENTS

TABLE OF CASES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1201

ZEIGLER COAL COMPANY, *Petitioner,*

v.

LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA AND LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA, *Respondents.*

BRIEF AMICUS CURIAE OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC. IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BCOA'S INTEREST

The Bituminous Coal Operators' Association, Inc. herein called "BCOA", is a national association of coal operators, organized in 1950 for the purpose of negotiating and assisting in interpreting BCOA's national agreements with the United Mine Workers of America, herein called "UMWA". BCOA has a membership of approximately 130 companies who operate coal mines in bituminous coal mining states, and who collectively produced approximately 75 percent of the bituminous coal mined under the National Bituminous

Coal Wage Agreement of 1974, herein called the "1974 Agreement".

BCOA was formed against the backdrop of the labor strife in the coal industry during the 1940's, a period characterized by strikes and by Government seizures of the coal mines. BCOA's purpose was to create more stable labor relations and to establish and maintain harmonious relationships between the coal operators and their employees and their employee representative, the UMWA. For a period of time these efforts were successful in that between the early 1950's and the present a succession of national labor agreements have been negotiated between BCOA and UMWA without any seriously prolonged or crippling economic strikes. Escalating wildcat strikes now threaten all this progress. The 1977-78 Agreement has been negotiated subject to membership ratification.

Prior to the current negotiations, the latest contract renewal was the 1974 Agreement, which became effective in December 1974 to run for a three-year period. This 1974 Agreement was hailed as one of the most progressive labor agreements ever negotiated. It provided for wage and benefit levels which were at least as beneficial to the miners as those in any other major industry. It also contained provisions for the handling of grievances and for various types of expedited arbitration over a broad range of issues. All local grievances, disputes, or local trouble of any kind, were subject to final and binding settlement through the grievance-arbitration procedures of the 1974 Agreement. There was no labor agreement of record that contained a broader grievance-arbitration clause. The agreement provided for eventual resolution of major disputes by a national Arbitration Review Board.

Under the 1974 Agreement, grievances at the local mine level which were not settled were assigned in rotation to panel arbitrators. These panel arbitrators were empowered to hear the grievances and to render final and binding decisions. The panel arbitrator's decision was subject to review by a national Arbitration Review Board.

The function of the Arbitration Review Board under the 1974 Agreement was to resolve conflicts in panel arbitrators' decisions, to determine whether a panel arbitrator's decision was arbitrary, capricious, or fraudulent, and to decide questions of contractual interpretations affecting the industry as a whole. There were special expedited procedures for discharge cases and safety disputes.

The provisions for grievance handling and for arbitration were and still are fully functioning. The number of arbitrations has steadily increased since 1974. These procedures were readily available; and they were being used by the vast majority of the coal miners to resolve their grievances.

But, unfortunately, there are a relative few coal miners who from time to time take the law in their own hands to engage in wildcat strikes over a local grievance or dispute. A local strike is periodically escalated into a widespread wildcat strike extending beyond the mine of origin and encompassing all or several UMWA districts. Such escalation is normally brought about by "roving" pickets who fan out over the coal fields and shut down mine after mine in order to mount increasing pressure on the industry to forego arbitration and give in to the grievance. The result of

such coerced resolution bears equally on the unionized industry under the National Agreement.

Despite the forward-looking 1974 Agreement, stability of employment in the coal industry has steadily worsened since that Agreement was signed. There were more wildcat strikes in the bituminous coal industry in 1974 than ever before. The record for 1975 was worse; in 1976, it was worse than in 1975; and 1977 was the worst year yet. The losses in wages, production, and revenue to the Health and Retirement Funds for 1973, 1974, 1975, 1976, and 1977 are astronomical.

The particular work stoppage in West Virginia, which was the genesis of this case, was at a single mine and was over a clearly arbitrable issue—an issue that *was* indeed arbitrated. It caused the shutdown of over one-half of the total production of bituminous coal in the Nation. It inflicted severe losses on coal production, on the coal miner, on the Health and Retirement Funds, on the coal communities, on the coal States, and on the Nation. There have been other widespread wildcat strikes since that time.

In the 1974 Agreement, the mine operators agreed to double their contributions to these Trust Funds (which had also been done in 1971) and to dramatically increase the pensions both for present pensioners and for the future pensions of active miners. The health and medical benefits plans in the bituminous coal industry are among the most liberal in the Nation.

The contributions to these trust funds by employers are based on a combination of tons of production and cents per hour for hours actually worked. Consequently, the financial stability of these funds depends directly on the continuing and uninterrupted

production of coal. This stability has been threatened by the rising level of wildcat strikes to the point where the health trusts for active and retired miners are in a bankrupt position. The Board of Trustees, the Chairman of which is appointed by the UMWA, has from time to time issued statements warning of the serious damage to the miners' Health and Retirement benefits arising from the recurring incidence of wildcats. The two benefit funds were in virtual bankruptcy before the 1974 Agreement expired, and the 1950 Pension Fund was badly hurt. After the strike, they were unable to pay the 1950 pension benefits.

BCOA and its members have a grave and continuing interest in preserving the integrity of the periodic agreements negotiated with the UMWA, in preserving the grievance-arbitration procedures of those agreements, and in maintaining employment stability and production of bituminous coal. BCOA and its members also have a similar direct interest in the stability of the Health and Retirement Funds, to which employers are the sole contributors.

Recurring and escalating wildcat strikes are, to our knowledge, a phenomenon not found in any other industry to any similar degree. But in the coal industry, they are a serious and mounting threat to the nation's economy.

BCOA does not believe in nor advocate the settlement of labor disputes in the courts. BCOA encourages the settlement of disputes by the grievance-arbitration procedures of the agreement. But the courts must perform their traditional role of establishing the parameters of lawful conduct in order that the parties to labor disputes are made aware of their mutual rights and obligations.

Because of its direct and overriding interest in improving labor relations, promoting labor peace, insuring stability of employment, and encouraging respect for the agreement, BCOA files this brief to respectfully bring to the attention of this Court the scope and seriousness of the issues which are before it.

QUESTION PRESENTED

We submit that there is an issue of national import presented here: WHETHER or not a court which concededly can enjoin strikes over arbitrable grievances at their source, can also enjoin strikes at other mines for the purpose of placing pressure on the particular employer, and on the entire BCOA membership, to forego the grievance-arbitration process and to capitulate to the Union's interpretation of the national agreement.

BRIEF STATEMENT OF THE CASE

Petitioner Zeigler Coal Company is a member of BCOA, and a party to the 1974 Agreement.

This agreement contained a very broad grievance-arbitration clause which provided for grievances and binding arbitration of any grievance or "any local trouble of any kind" arising at a mine. It also contained a mutual pledge to "maintain the integrity of the agreement".

Because of a series of wildcat strikes in 1975 at two of Ziegler's mines, a *Boys Markets* injunction was obtained against future picketing over arbitrable disputes, and that injunction was in effect at the time the events here involved transpired.

In July 1976 U.M.W.A. members at a mine of Cedar Coal Company in West Virginia went on strike over a single grievance which was not only arbitrable, but was arbitrated. Roving pickets soon shut down mines employing more than 75,000 miners in the six Eastern coal-producing states in a massive wildcat strike.

The two Zeigler mines in Illinois were among the victims. Zeigler applied for, but was denied, court relief in the U.S. District Court, and that action was sustained by the Seventh Circuit, purportedly on the authority of *Buffalo Forge,* 428 U.S. 397 (1976).

The Wildcat Strike Which Shut Down Zeigler's Mines Fits the Normal Pattern in the Coal Industry

As is usual, the strike at Zeigler's mines did not start at Zeigler, which is located in UMWA District 12 in Illinois, but in District 17 in southern West Virginia. The orginal strike began at one mine of Cedar Coal Company in the summer of 1976. That strike was over an arbitrable issue. Through roving pickets, it fanned out until it shut down more than half of the unionized bituminous coal mines in the industry.

Zeigler sought injunctive relief in the courts for the strike at its mines, but it was denied on the basis of *Buffalo Forge.* The Seventh Circuit agreed with the District Court.

Boys Markets Provides the Basis for Injunctive Relief and *Buffalo Forge* Does Not Prohibit It

We submit that the lower court misinterpreted and misapplied *Buffalo Forge;* and that in the interests of stable labor relations in the coal industry, the Court should grant *certiorari* in this case.

BCOA submits that in this type of case, injunctive relief is clearly appropriate as a legal matter and is essential: (1) to preserve the integrity of the Agreement; (2) to protect the Health and Retirement Funds; (3) to secure an adequate supply of coal; and (4) to prevent chaos in the coal fields. We further submit that injunctive relief is not prohibited by *Buffalo Forge* and is still sanctioned by *Boys Markets,* 398 U.S. 235 (1970).

Boys Markets holds that where there is a labor contract in effect containing a binding grievance and arbitration procedure, there arises an implied agreement not to strike over an arbitrable dispute. In the event such a strike does occur, the federal courts are empowered to enjoin such strikes and to order arbitration of the dispute.

The courts have frequently noted the scope and breadth of the grievance-arbitration clause of the 1974 Agreement. Article XXIII, Section (c) of that Agreement provided for grievance-arbitration of differences arising as to the meaning and application of the provisions of the Agreement; differences arising over matters not specifically mentioned in the Agreement; or "local trouble of any kind". This clause was given a very broad scope by this Court in *Gateway Coal Company* v. *UMWA,* 414 U.S. 368 (1974), which involved an alleged safety issue. The Supreme Court extended *Boys Markets* to an injunction enforcing the implied no-strike clause in the then-existing 1971 National Agreement, although the question of arbitrability of a safety grievance was itself a "substantial question of contract interpretation." 414 U.S. at 380-384. See, footnote 14 in Mr. Justice Stevens' opinion in *Buffalo Forge.*

BCOA submits that *Boys Markets* is applicable here.

There was admittedly an arbitrable dispute at the original Cedar Coal mine; and when other UMWA Local unions such as those at Zeigler Coal were picketed and then ceased work, their actions were plainly designed to frustrate and to undermine the arbitration process. As the Supreme Court said in *Buffalo Forge,* "The driving force behind *Boys Markets* was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties." In giving approval to *Boys Markets* in *Buffalo Forge,* the Court stated further that,

> "Striking over an arbitrable dispute would interfere with and frustrate the arbitral process by which the parties had chosen to settle a dispute. The *quid pro quo* for the employer's promise to arbitrate was the union's obligation not to strike over issues that were subject to the arbitration machinery." 96 S.Ct. 3141, 3147 (1976)

It seems quite clear that the force and effect of the action of the Zeigler Coal Company locals was to join hands with the roving pickets in an effort to compel the original employer (Cedar Coal Company) and ultimately the entire unionized industry to capitulate on an arbitrable dispute. Therefore, all locals engaging in and joining this concerted effort breached their implied obligation not to strike over an arbitrable dispute, and were subject to injunction under *Boys Markets.*

In the wake of *Buffalo Forge,* some confusion and uncertainty has been manifested by district judges and by courts of appeals as to its application to wildcat strikes in the coal industry. In addition to the Seventh Circuit decision in this case, see also, *U.S. Steel*

Corp. v. *UMWA Local 6321,* 548 F.2d 67 (3rd Cir. 1976); *Southern Ohio Coal Company* v. *UMWA,* 551 F.2d 695 (6th Cir. 1977). It appears that the lower courts have overreacted to *Buffalo Forge,* which is understandable. We can appreciate the burdens sometimes imposed on the courts by court actions to enjoin these widespread and recurring wildcat strikes. But, when one party refuses to honor an agreement to arbitrate rather than to strike, we know of no way to enforce that agreement except through the courts. No person or group should be above the law.

The Fourth Circuit in the original *Cedar Coal* case showed some understanding of the unique situation in the bituminous coal industry which is dominated by a single union with a national agreement containing wages, benefits, and terms and conditions of employment common to all companies signatory to that agreement, and to all UMWA coal miners. But the Fourth Circuit stopped short of the logic of its own sound reasoning, and refused to enjoin a strike at a mine of another Company, although that strike stemmed directly from the presence of roving pickets. *Cedar Coal Company* v. *UMWA,* 560 F.2d 1154 (1977).

In *Cedar Coal,* the strike began over a grievance that was admittedly arbitrable. The Fourth Circuit held the original strike was enjoinable. The Court also held that the strike by Local 1766 at two other Cedar Coal mines was in furtherance of Local 1759's unlawful objective, and was likewise enjoinable. The Court reasoned thusly:

> "Here, the employer is the same as to both Locals; the collective bargaining agreement is the same; the bargaining unit is the same; the locality of em-

> ployment is the same; and, most importantly, the purpose of 1766's refusal to cross the 1759 picket lines was not to coerce Cedar into conceding an issue to Local 1759 which was not arbitrable; rather, the purpose of the 1766 strike was to coerce Cedar into conceding an issue to Local 1759 which was admittedly arbitrable. We also bear in mind that under the two-tier arbitration provisions of the collective bargaining agreement, Article XXIII, the award in the 1759 case apparently would affect also Local 1766, for there are only three grounds of appeal to the Arbitration Review Board: that the decision of a panel is in conflict on the same issue with other panels; that the decision involves a new question of a substantial contractual issue; and that the panel decision is arbitrary, etc.
>
> We think, then, that since the purpose of the strike of Local 1766 was to compel Cedar to concede an arbitrable issue to Local 1759, with the same employer, the same collective bargaining agreement, the same bargaining unit, and the cause of Local 1759 made its own, that the *Buffalo Forge* exception to *Boys Markets* should not apply, ..." (Decision, pp. 57-58)

However, the Fourth Circuit in *Cedar Coal* refused to apply the same reasoning to the strike of Local 1949 at Southern Ohio Coal, holding instead that the District Court was correct in denying a preliminary injunction. The reason for the distinction is unclear.

We submit that where all the other bases for injunctive relief are present, it is immaterial whether the employer being picketed and struck in pursuit of a common cause is the same or a different employer.

The critical factors, in our opinion, are the other ones enumerated by the Fourth Circuit in *Cedar Coal.* They are: the same collective bargaining agreement; the same bargaining unit; the purpose of coercing the particular employer and indeed the entire BCOA membership into conceding on an arbitrable issue; and the same impact of the resolution of the particular issue on all BCOA members and all UMWA members.

In short, whether or not the same Company (or as mentioned by the Court, the same locality) is involved, all of the local Unions who went on strike were engaged in a transparent conspiracy and an orchestrated, concerted work stoppage designed to force the industry to capitulate to the Union's interpretation of a specific provision of the 1974 Agreement. Nothing could be more clearly designed to thwart and undermine the arbitration process.

The strikes at the two Zeigler Coal mines were the direct outgrowth and extension of the originating Cedar Coal strike. These strikes were, therefore, in pursuance of the Cedar Coal dispute, and were for the purpose of putting pressure on Cedar Coal and the industry to accede to the Union's demands, and concede an arbitrable issue.

For this reason, *Boys Markets* should govern.

The majority of this Court in *Buffalo Forge* pointed out the features of that case which distinguished it from *Boys Markets.* The Court stated:

> ". . . The District Court found, and it is not now disputed, that the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of

> the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between the employer and respondents. *The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain.*" [emphasis added]

The situation presented here is wholly distinguishable from *Buffalo Forge.* Overriding all else, the essential difference between *Buffalo Forge* and this case is the one emphasized by this Court in the above quotation. In *Buffalo Forge,* the strike had neither the purpose nor effect of evading an obligation to arbitrate nor of depriving the employer of his bargain. In this case, that was the whole purpose of the original strike at Cedar Coal, and the accompanying picketing which spread the strike throughout the coal fields, eventually victimizing Zeigler Coal and hundreds of other operators.

The conclusion seems inescapable that all UMWA locals which went on strike in response to roving pickets were direct participants in a concerted effort to gain by force, rather than by submission to arbitration, their interpretation of the National Agreement. Thus, the purpose and effect of the activities of all those locals was to evade the contractual obligation to arbitrate, and to force their unilateral interpretation on the industry.

Not even superficially can it be said that the Zeigler strike was a "sympathy strike" within the meaning of *Buffalo Forge.* This is not a case where one union with a separate agreement in a separate employee bargain-

ing unit respects the picket lines of another union negotiating for a separate agreement in a separate employee unit. In such a case, there is no arbitrable dispute other than the sympathy strike itself. That was the ruling in *Buffalo Forge*. The union engaging in the sympathy strike had no *direct* interest in the dispute between the striking union and the employer.

Here, all UMWA locals and their members are parties to the same National Agreement, negotiated between BCOA and UMWA "on behalf of its members". They have a direct unity of interest in any underlying dispute involving the meaning and application of any of the terms of their identical agreement. They stand to gain or lose equally from the arbitration of the issue, and to gain or lose equally from resolution of the issue by engaging in a wildcat strike. This is so because interpretation of the 1974 Agreement is a matter in which the members of BCOA and UMWA have an identical and direct interest. The abritrator's ruling at one mine favorable to one grievant can benefit the members at all mines; and an unfavorable ruling can equally be detrimental to them. An enforced settlement by the use of economic force has exactly the same effect.

This situation is thus essentially different from that in *Buffalo Forge* where, as the Court pointed out, there was *no underlying dispute* "that was even remotely subject to arbitration."

Another distinction is that in *Buffalo Forge* the union originally on strike was engaged in a *legal,* primary strike and primary picketing. Here, the original strike at Cedar Coal was *illegal* and in violation of the 1974 Agreement. It would be paradoxical to find that the original strike was an enjoinable one, as the

Fourth Circuit found in *Cedar Coal,* but that the strikes by other locals at other companies in aid of the same unlawful objective are lawful and unenjoinable, as the Seventh Circuit did in this *Zeigler Coal* case.

Finally, BCOA believes that the application of *Buffalo Forge* must be considered in the context of the collective bargaining relationships which exist in the bituminous coal industry.

In *Buffalo Forge* there were two separate locals representing two separate "bargaining units". One was striking to obtain its own separate agreement. The other struck in sympathy. This was a classic "sympathy" strike.

By contrast, all bituminous coal miners employed by members of BCOA are members of a *single multi-employer bargaining unit.* The employers in that bargaining unit are all the members of BCOA. All UMWA miners employed by members of BCOA are covered by a single national agreement containing identical terms and conditions applicable to all of them. The Agreement is a national agreement negotiated between BCOA and the International Union.

The terms of the National Agreement apply alike to all members of UMWA employed by BCOA members; likewise their employers are all mutually bound to respect and to follow the common grievance-arbitration procedures. They also all are bound by Article XXVII, to ". . . maintain the integrity" of the agreement.

Vital to maintaining this "integrity" is the pledge to abide by the grievance-arbitration procedures for settling disputes. As members of the same bargaining unit covered by the same national agreement, each

BCOA member and each UMWA member has an obligation to uphold the agreement and a duty not to engage in lockouts, in strikes, or in picketing over any dispute, no matter at what mine or what Company the dispute arises, so long as that underlying dispute is arbitrable.

If the situation were one in which there was a single plant-wide unit and contract, it would make no sense to say that the employees in Department A who struck over an arbitrable grievance *could be* enjoined under *Boys Markets,* but that the employees in Department B who went out in "sympathy" *could not*. Clearly, in such a situation, the entire strike in a single bargaining unit would be enjoinable under *Boys Markets.*

Conceptually, although on a larger scale, the case just hypothesized is the situation between BCOA and the members of the UMWA under the 1974 Agreement. There is one national contract and one national bargaining unit. The miners at each individual mine of member companies may and do belong to various local unions. They have their own seniority lists and initiate their own grievances. But these locals do not constitute separate bargaining units. Their wages, hours, conditions, benefits, and seniority rights are negotiated between BCOA and UMWA and are derived from the one national agreement. Their grievances are processed under that agreement. Indeed, grievances go in progressive steps from the local to the District level and then to arbitration before panel arbitrators selected by BCOA and UMWA under the National Agreement.

Moreover, in the 1974 Agreement, for the first time, a provision was made for a National Arbitration Review Board which functions as the final arbiter of all

disputes. The professed purpose and effect of this National Board was to bring about uniformity in the interpretation and application of the agreement.

Given the existence of a single agreement in a single multi-employer bargaining unit, and an arbitration procedure designed to insure conformity of interpretation, BCOA members and all members of the Union employed by members of BCOA are mutually bound to abide by the common grievance-arbitration procedures. In this unitary relationship, the concepts of "primary" strikes and "sympathy" strikes do not apply. These terms connote separateness of unions, units, and interests which do not exist here. All coal miners have a direct interest in the disputes of all other miners. Because of this close unity of interest among the members of the UMWA and all members of BCOA in the outcome of any contractual dispute, *Buffalo Forge* is clearly inapposite.

The Court below in *Zeigler* appears to agree philosophically with much of this reasoning, but rejects its applicability to the Zeigler strikes. The apparent reason for the Court's opinion was its failure to perceive any nexus between the Cedar Coal originating strike and the Zeigler strike. The Seventh Circuit felt that there was insufficient record support for finding that, by striking, the Zeigler locals were adopting the grievances and goals of the Cedar Coal locals.

We most respectfully submit that this is unrealistic in the extreme. In the real world of the wildcat strike in the coal industry, this phenomenon of spreading strikes by roving pickets has occurred on numerous occasions, and the pattern of conduct has been the same. The wildcat strike is not a mere happening. In the wildcat strike there are no separate classes of "pri-

mary" and "sympathy" strike. The wildcat strike, spread by roving pickets, is an awesome offensive weapon turned against the coal industry to force concessions favorable to the entire UMWA membership on issues that the UMWA has expressly agreed to settle by the grievance-arbitration procedures.

The wildcat strike and the arbitration process are incompatible. They cannot co-exist. The contract must be enforced by the courts or it has no meaning or effectiveness. The nexus between the Cedar Coal strike and the Zeigler strike is obvious and inescapable. To require further proof than exists in this record is to require the impossible. The record evidence is more than ample. What is needed is Court recognition of the transparent realities.

CONCLUSION

The Norris-LaGuardia Act, which was enacted more than 40 years ago, was adopted in response to a growing trend of the courts to enjoin primary strikes on the ground that they were in violation of the Sherman Act as creating a monopoly in restraint of trade. At that point, there was a direct confrontation between management and labor over the basic question of the rights of unions to represent employees and to engage in primary strikes. There was at that time no law or mechanism for certifying unions as collective bargaining representatives of employees or of enforcing, by law, the right of collective bargaining.

But, this was altered by the National Labor Relations Act in 1935, later amended, which gave employees the right to select an exclusive bargaining agent and required employers to recognize and to bargain for agreements with such representatives.

Since that time, employee unions have exercised these rights and thousands of labor agreements are negotiated every year. Among the foremost is the National Bituminous Coal Wage Agreement.

Once this relationship of collective bargaining comes into being, as it has in the coal industry, the appropriate emphasis should be focused on the maintenance of stability of employment under the agreement negotiated between management and labor.

That is truly the issue involved here. The simply stated principle embodied in the National Bituminous Coal Wage Agreement is that *both parties* shall "maintain the integrity of the agreement" during its term, recognizing that at periodic intervals there may be legal strikes over the terms of a new agreement. A part of this mutual obligation during the contract term is the obligation of both parties to use the grievance-arbitration procedures of the agreement to resolve disputes. This leaves no room for strikes or lockouts to force the other party to adopt the aggressor's unilateral interpretation of the agreement.

Otherwise, the concept of an agreed period of labor peace under an agreement for a fixed term becomes an illusion.

For the above reasons, BCOA supports the Petition for a Writ.

Respectfully submitted,

GUY FARMER
FARMER, SHIBLEY, MCGUINN & FLOOD
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for the Bituminous Coal Operators' Association, Inc.

March 24, 1978